

Attachment 3: Revisions to Family Care District Statute

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
March 5, 2002

Title: Family Care District – Changes Limiting Ongoing County Influence

Current Language

46.281 Powers and duties of the department and the secretary; long-term care. (1)

DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Provide training to members of the council on long-term care who are aged 65 or older or who have physical or developmental disabilities or their family members, guardians or other advocates, to enable these members to participate in the council's duties.

(b) Provide information to the council on long-term care, including copies of reports submitted to the department by local long-term care councils, and seek recommendations of the council.

(c) Request from the secretary of the federal department of health and human services any waivers of federal medicaid laws necessary to permit the use of federal moneys to provide the family care benefit to recipients of medical assistance. The department shall implement any waiver that is approved and that is consistent with ss. 46.2805 to 46.2895. Regardless of whether a waiver is approved, the department may implement operation of resource centers, care management organizations and the family care benefit.

(d) Before July 1, 2001: 1. Establish, in geographic areas in which resides no more than 29% of the population that is eligible for the family care benefit, a pilot project under which the department may contract with a county, a family care district, a tribe or band or the Great Lakes inter-tribal council, inc., or with any 2 or more of these entities under a joint application, to operate a resource center.

2. In geographic areas in which resides no more than 29% of the population that is eligible for the family care benefit, contract with counties or tribes or bands under a pilot project to demonstrate the ability of counties or tribes or bands to manage all long-term care programs and administer the family care benefit as care management organizations.

(e) After June 30, 2001, if the local long-term care council for the applicable area has developed the initial plan under s. 46.282 (3) (a) 1., contract with entities specified under par. (d) and, only if specifically authorized by the legislature and if the legislature appropriates necessary funding, contract as so authorized with one or more entities in addition to those specified in par. (d) certified as meeting requirements under s. 46.284 (3) for services of the entity as a care management organization and one or more entities for services specified under s. 46.283 (3) and (4).

(f) Prescribe and implement a per person monthly rate structure for costs of the family care benefit.

(g) In order to maintain continuous quality assurance and quality improvement for resource centers and care management organizations, do all of the following:

1. Prescribe by rule and by contract and enforce performance standards for operation of resource centers and care management organizations.
 2. Use performance expectations that are related to outcomes for persons in contracting with care management organizations and resource centers.
 3. Conduct ongoing evaluations of the long-term care system specified in ss. 46.2805 to 46.2895.
 4. Require that quality assurance and quality improvement efforts be included throughout the long-term care system specified in ss. 46.2805 to 46.2895.
 5. Ensure that reviews of the quality of management and service delivery of resource centers and care management organizations are conducted by external organizations and make information about specific review results available to the public.
- (h) Require by contract that resource centers and care management organizations establish procedures under which an individual who applies for or receives the family care benefit may register a complaint or grievance and procedures for resolving complaints and grievances.
- (i) Prescribe criteria to assign priority equitably on any necessary waiting lists for persons who are eligible for the family care benefit but who do not meet the criteria under s. 46.286 (3).

46.282 Councils on long-term care.

(3) LOCAL LONG-TERM CARE COUNCILS; POWERS AND DUTIES. (a) A local long-term care council shall do all of the following within the council's area:

1. Develop the initial plan for the structure of the county, multicounty or tribal resource center and care management organization or organizations, including formulating recommendations to the county board or boards of supervisors and, in a county with a county executive or a county administrator, to the county executive or county administrator, to the governing body of the tribe or band or of the Great Lakes inter-tribal council, inc., if applicable, and to the department on all of the following:

a. Whether or not the county, counties, tribe or band or Great Lakes inter-tribal council, inc., should exercise its right to apply under s. 46.283 (1) for a contract to operate a resource center or to apply under s. 46.284 (1) for a contract to operate a care management organization and how the operation should proceed.

b. Whether the county should create a family care district to operate a resource center or under a care management organization.

46.2895 Family care district. (1) CREATION. (a) After considering recommendations of the local long-term care council under s. 46.282 (3) (a) 1., a county board of supervisors may create a special purpose district that is termed a "family care district", that is a local unit of government, that is separate and distinct from, and independent of, the state and the county, and that has the powers and duties specified in this section, if the county board does all of the following:

1. Adopts an enabling resolution that does all of the following:

a. Declares the need for establishing the family care district.

b. Specifies the family care district's primary purpose, which shall be to operate, under contract with the department, either a resource center under s. 46.283 or a care management organization under s. 46.284, but not both.

2. Files copies of the enabling resolution with the secretary of administration, the secretary of health and family services and the secretary of revenue.

(b) The county boards of supervisors of 2 or more counties may together create a family care district with the attributes specified in par. (a) (intro.) on a multi-county basis within the counties if the county boards of supervisors comply with the requirements of par. (a) 1. and 2.

(2) JURISDICTION. A family care district's jurisdiction is the geographical area of the county or counties of the county board or boards of supervisors who created the family care district.

(3) FAMILY CARE DISTRICT BOARD. (a) 1. The county board of supervisors of a county or, in a county with a county administrator or county executive, the county administrator or county executive shall appoint the members of the family care district board, which is the governing board of a family care district under sub. (1) (a).

2. The county boards of supervisors of 2 or more counties shall appoint the members of the family care district board, which is the governing board of the family care district under sub. (1) (b). Each county board shall appoint members in the same proportion that the county's population represents to the total population of all of the counties that constitute the jurisdiction of the family care district.

(b) 1. The family care district board appointed under par. (a) 1. shall consist of 15 persons who are residents of the area of jurisdiction of the family care district. At least one-fourth of the members shall be representative of the client group or groups whom it is the family care district's primary purpose to serve or those clients' family members, guardians or other advocates.

2. The family care district board appointed under par. (a) 2. shall consist of an odd number of members that is at least 15 but not more than 21 persons, all of whom are residents of the area of jurisdiction of the family care district. At least one-fourth of the members shall be representative of the client group or groups whom it is the family care district's primary purpose to serve or those clients' family members, guardians or other advocates.

3. Membership of the family care district board under subd. 1. or 2. shall reflect the ethnic and economic diversity of the area of jurisdiction of the family care district. Up to one-fourth of the members of the board may be elected or appointed officials or employees of the county or counties that created the family care district. No member of the board may have a private financial interest in or profit directly or indirectly from any contract or other business of the family care district.

(c) The members of the family care district board appointed under par. (a) shall serve 3-year terms. No member may serve more than 2 consecutive terms. Of the members first appointed, 5 shall be appointed for 3 years; 5 shall be appointed for 4 years; and 5 or, in the case of a board appointed under par. (b) 2., the remainder, shall be appointed for 5 years. A member shall serve until his or her successor is appointed, unless removed for cause under s. 17.13.

(d) As soon as possible after the appointment of the initial members of the family care district board, the board shall organize for the transaction of business and elect a chairperson and other necessary officers. Each chairperson shall be elected by the board from time to time for the term of that chairperson's office as a member of the board or for the term of 3 years, whichever is shorter, and shall be eligible for reelection. A majority of the board shall constitute a quorum. The board may act based on the affirmative vote of a majority of a quorum.

Proposed Change

46.281 (1) (j) is created to read:

(j) Review the list of proposed initial members of a family care district board under s. 46.2895 (1) (a) 2. b. and the recommendations of the local long term care council under s. 46.2895 (1) (a) 2. c., and either approve or disapprove the proposed membership.

46.282 (3) (a) 1. b. is amended to read:

b. Whether the county should create a family care district to operate a resource center or under a care management organization, and review the list of proposed initial members of the family care district board under s. 46.2895 (1) (a) 2. b. and recommend to the secretary of health and family services whether to approve or disapprove the proposed membership.

46.2895 (1) (a) is amended to read:

46.2895 Family care district. (1) CREATION. (a) After considering recommendations of the local long– term care council under s. 46.282 (3) (a) 1., and with approval of the secretary of health and family services, a county board of supervisors may create a special purpose district that is termed a “family care district”, that is a local unit of government, that is separate and distinct from, and independent of, the state and the county, and that has the powers and duties specified in this section, if the county board does all of the following:

46.2895 (1) (a) 2. is amended to read:

2. ~~Files copies of the enabling resolution~~ with the secretary of administration, the secretary of health and family services and the secretary of revenue, copies of:

46.2895 (1) (a) 2. a. is created to read:

a. The enabling resolution under s. 46.2895 (1) (a) 1.

46.2895 (1) (a) 2. b. is created to read:

b. A list of the names and addresses of the proposed initial members of the family care district board under s. 46.2895 (3).

46.2895 (1) (a) 2. c. is created to read:

c. Recommendations of the local long term care council created under s. 46.282 (2) related to the proposed initial members under subpar. b.

46.2895 (3) (a) 1. is amended to read:

(3) FAMILY CARE DISTRICT BOARD. (a) 1. The county board of supervisors of a county or, in a county with a county administrator or county executive, the county administrator or county executive shall, with approval of the secretary of health and family services, appoint the initial members of the family care district board, which is the governing board of a family care district under sub. (1) (a).

46.2895 (3) (b) 3. is amended to read:

3. Membership of the family care district board under subd. 1. or 2. shall reflect the ethnic and economic diversity of the area of jurisdiction of the family care district. ~~Up to~~ Less than one-fourth of the members of the board may be elected or appointed officials or employees of the county or counties that created the family care district. No member of the board may have a private financial interest in or profit directly or indirectly from any contract or other business of the family care district.

46.2895 (3) (c) is amended to read:

(c) The initial members of the family care district board appointed under par. (a) shall serve 3-year terms. No member may serve more than 2 consecutive terms. Of the members first appointed, 5 shall be appointed for ~~3~~ 1 years; 5 shall be appointed for ~~4~~ 2 years; and 5 or, in the case of a board appointed under par. (b) 2., the remainder, shall be appointed for ~~5~~ 3 years. A member shall serve until his or her successor is appointed, unless removed for cause under s. 17.13.

46.2895 (3) (e) is created to read:

(e) The family care district board shall appoint successors to the initial members of the family care district board when an initial member's term expires or when a member is removed for cause under s. 17.13.

Effect of the Change

- In creating a Family Care District, a county board(s) is limited to appointing the initial members of the Family Care District board.
- The Local LTC Council reviews the proposed initial members of the district board, and recommends to the Secretary whether to approve or disapprove the proposed membership.
- The Secretary approves or disapproves the proposed initial members of district board.
- Length of terms of initial members of the board of a Family Care District are shortened.
- The board of a Family Care District fills any subsequent board vacancies.
- The number of elected or appointed officials or employees of the county that may be board members is limited to less than one-fourth of the members of the district board.

Rationale for the Change

The Health Care Financing Administration will not approve a Family Care waiver if it is not satisfied that there is sufficient separation of assessment for level of care eligibility and enrollment counseling and assistance in the Resource Center from the CMO or other major service providers to prevent conflict of interest. HCFA has indicated that it does not believe current statutory language creates enough separation of the Family Care District from the county board that creates a district to protect against such conflicts of interest if that county board appoints and reappoints the members of the district board. The changes are intended to make the Family Care District and means of separation that is acceptable to HCFA, and make that option available to Family Care pilots for addressing potential conflict of interest.

Desired Effective Date:	Upon enactment
Agency:	DHFS
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